IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEALS Nos 32,33 and 35 of 1998

in

SPECIAL CIVIL APPLICATION No.7971 of 1991,
Special Civil Application No.4565 of 1992
Special Civil Application No.14310 of 1993

With

Civil Applications Nos.798, 799 and 806 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT
Versus
JAMNAGAR JILLA KHANGI PRATHMIKSHIKSHAK SANGH

Appearance:

Ms.Harsha Devani, learned AGP for the appellants

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE N.G.NANDI

Date of decision: 13/08/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. These three Letters Patent Appeals are directed against the common judgment and order dated 9.5.97 whereby several Special Civil Applications including Special Civil Applications Nos.7971/91, 4565/92 and 14310/93 were decided.

2. There is no dispute between the parties that the teachers, who were working in the private recognised grant in aid Colleges, Higher Secondary Schools and Secondary Schools were paid the medical allowance as per Government Resolution but with regard to the payment of medical allowance to the teachers working in similarly situated Primary Schools no Government Resolution had been passed. However, the District Education Officer started making payment of the medical allowances to the teachers working in such private Primary Schools also except in Gandhinagar District. The Director of Education took exception to it on the ground that the medical allowance was not payable to the teachers working in such private Primary Schools and, therefore, the medical allowance, which was being paid to the Teachers in such private Primary Schools was stopped with the issue of the clarification in the year 1991. This controversy gave rise to several Special Civil Applications by the teachers in the private-Government recognised and grant in aided Primary Schools. Learned single Judge has found that there was no basis for denying the payment of the medical allowance to the teachers of the private primary recognised Government aided Schools and the learned single Judge has declared that the teachers working in the Primary recognised grant in aided private schools in the State of Gujarat were entitled to medical allowance at the rate at which it is payable to other similarly situated teachers working in the private Colleges, Higher Secondary Schools and Secondary Schools which are recognised by Government and are also aided. The order of the Director of Education dated 11.9.91 has been quashed and set aside and it has been ordered that all the teachers in the private Primary Schools shall be entitled for these benefits, irrespective of the fact whether they had approached this court or not and the respondents were directed to calculate the amount payable to this class of persons within a period of three months from the date of the

receipt of the certified copy of the order and arrears to be paid within 2 months next thereafter with the further order that all the teachers of recognised grant in aided primary schools, who could not receive the medical allowance as it was discontinued and who were not protected by the Court's order were at liberty to lodge their claim with the concerned District Education Officer and their claims shall be decided within a period of 3 months from the date of the receipt of the claim and the amount of arrears of medical allowance shall be paid to the concerned teachers within a period of 2 months next thereafter. In case the amount is not paid within stipulated period, the teachers of such private Primary Schools shall be entitled for interest thereon at the rate of 12 per cent per annum from the last date of the stipulated period. The Director of Education was also directed to issue necessary circulars in this respect within a period of one month from the date of the receipt of the certified copy of the order and circulate the same to all District Education Officers and in turn, the concerned District Education Officers shall circulate the same to all the teachers of recognised private grant in aided primary schools of the concerned District.

3. Learned counsel for the appellants has assailed the aforesaid order on the ground that under the Government Resolution nothing has been mentioned with regard to the payment of medical allowance to the teachers of such private primary schools and, therefore, the same could not have been paid and even if paid, the same was rightly stopped with the issue of the clarification in the year 1991. She has also made reference to Rule 106(4)(v) of the Bombay Primary Education Rules, 1949 according to which the rates of tuition fees, the pay scales and allowances of the teaching staff shall be such as may be approved by the Government from time to time. Based on this rule her submission is that whereas the Government had not approved the payment of medical allowance to the teachers of Primary Government recognised grant in aided Schools,there was no question of payment of medical allowance to them.

4. She has placed reliance on a decision of the Supreme Court in the case of Haryana State Adhyapak Sangh v.State of Haryana, reported in 1990 (Supp) SCC 306 para 11 thereof. The Supreme Court in the aforesaid case was concerned with the question of parity in employment on the principle of equal pay for equal work. That was a case in which the teachers working in the private but Government aided institutions sought parity with the

teachers working in the Government Schools for the purpose of pay scales. In para 11, the Supreme Court referred to its earlier directions contained in judgment dated 28.7.88 that the respondents should evolve a scheme to bring about parity between the teachers of aided schools and teachers of Government schools having regard to different allowances claimed by the petitioners and that the respondents should pursue the matter with the managements of the aided schools and a suitable scheme should be evolved at an early date.

5. We have considered the submissions made by the learned AGP. It is not in dispute that right from the beginning no option was given to the teachers working in the private Primary recognised Government aided schools to choose between the payment of medical allowance or reimbursement. Thus right from the beginning Teachers of the Primary Schools as above were neither getting benefits of reimbursement nor they were getting medical allowance. To our utter surprise, we find that despite this, while issuing the Government Resolution no care was taken to issue any direction with regard to the payment of medical allowance to teachers of Primary Schools while the same was decided to be paid to the teachers working in the private Colleges, Higher Secondary Schools and Secondary Schools. The factual position that the medical allowance is being paid to the teachers in such private-Government recognised and Government aided Institutions i.e. Colleges, Higher Secondary Schools and Secondary Schools is not disputed. What has been argued before us is that with regard to the teachers of Government recognised and Government aided private Primary Schools, no Government Resolution had been taken by the Government. It is, therefore, transparently clear in the facts of this case that the teachers of the private Primary Schools have been subjected to hostile discrimination. We find it to be a case of class within a class. The teachers working in the private recognized Government aided institutions whether they are working in Colleges, Higher Secondary Schools or Secondary Schools or Primary Schools form the same class for the purpose of medical allowance. The need or requirement of medical aid cannot vary merely because the teachers are working in Colleges, Higher Secondary Schools, Secondary Schools and Primary Schools. In case the same had not been decided for the teachers of Primary Schools while the same was decided in favour of the teachers in the private Government recognised and Government aided Colleges, Higher Secondary Schools and Secondary Schools, it was clearly discriminatory and for the purpose of assailing this order and for the purpose of defending the

Government's case no refuge can be sustained on the basis of the provisions of Rule 106(4)(v) of the Bombay Primary Education Rules, 1949.

6. So far as the Supreme Court decision in the case of Haryana State Adhyapak Sangh v.State of Haryana (Supra) is concerned, we find that, that was a case in which the private teachers as a whole formed one class and they were claiming parity with the Government employees. Such is not the case before us. Before us the grievance of discrimination is between the teachers working in private Primary Schools on one hand and teachers in private Colleges, Higher Secondary Schools and Secondary Schools inter se and both belong to the same class of teachers working in private-Government recognised and Government aided Institution whether Colleges, Higher Secondary Schools, Secondary Schools or Primary Schools. Learned AGP has submitted that the learned single Judge could at the most issue direction for framing a proper scheme in this regard, but could not have issued directions, as have been issued by him. Very recently in the matters of pension we have issued directions in an identical matter being LPA No.788/98 decided on 31.7.2001 to evolve out a scheme for payment of pension to the teachers of Primary Schools almost on the same reasoning because there also the pension was denied to the teachers of Government recognised and Government aided Primary Schools while the same was being paid to the teachers of Government recognised and Government aided Colleges, Higher Secondary Schools and Secondary Schools. The question of evolving a scheme arises when the dates of the commencement etc. with regard to payment of any benefit is required to be determined and there are no definite data for the purpose of giving the benefit as was the case in matters of pension. So far as the present case is concerned, the medical allowance had already been paid and it was so paid for number of years and was only stopped in the year 1991. Therefore, it is only a question of resuming the benefit which had already been paid may be without Government Resolution. Therefore, we do not find that any direction is required to be issued for the purpose of framing a scheme. The medical allowance has to be made effective in case of teachers of Government recognised and Government aided private Primary Schools from the same date as was made in the case of teachers of Government recognised and Government aided private Colleges, Higher Secondary and Secondary Schools and similar Government Resolution is required to be issued effective from the same date. Moreover, it is a case in which the benefit which was already given for certain

number of years but discontinued later in 1991 is simply required to be restored and resumed. We, therefore, do not find any error in the order as has been passed by the learned single Judge. On the contrary, the order seeks to render substantial justice and avoids uneven treatment which was given by creating a class within a class, which is not permissible either under Article 14 or Article 16 of the Constitution of India. Working of teachers whether in Primary Schools or in Colleges/Higher Secondary Schools/Secondary Schools has no nexus with the requirement and object for payment of medical allowance. The need of medical aid is common to all and under Article 14 and 16 of Constitution of India neither equals can be treated in an unequal manner, nor unequals can be treated in an equal manner, nor the State can act in an arbitrary or unreasonable or irrational manner subject to the permissible reasonable classification. We do not find any basis for any reasonable classification to classify the teachers of Primary Schools differently vis-a-vis the teachers of similarly situated Government recognised and Government aided Colleges/Higher Secondary Schools/Secondary Schools.

There is no merit in these appeals. All these three Appeals are hereby dismissed.

Since the main appeals have been dismissed, there is no question of stay in the Civil Applications. All the three Civil Applications stand rejected accordingly.

(M.R.Calla,J)

(N.G.Nandi,J)